

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2016

CORAM:

THE HON'BLE MR.JUSTICE P.DEVADASS

CrI.R.C. No.451 of 2016 and
CrI.M.P.No.3023 of 2016

Stalin Augustine Joseph @ A.J.Stalin .. Petitioner/2nd Accused

Vs.

Sri Saravana Spinning Mills (P) Ltd
rep. by R.Ganesh
Tiruppur. ... Respondent/Complainant

Petition filed under Sections 397 and 401 of the Code of Criminal Procedure, against the order dated 18.01.2016 passed in C.M.P.No.64 of 2015 in C.C.No.882 of 2015 on the file of the Judicial Magistrate No.1, Tirupur.

For Petitioner : Mr.S.Subbiah for Mr.P.Raja

O R D E R

Aggrieved by certain onerous conditions made in CMP.No.64 of 2015 in CC.No.882 of 2015, in its order dated 18.01.2016 by the learned Judicial Magistrate No.I, Tirupur, the petitioner has directed this revision.

2. A complaint has been instituted by the respondent for an offence under Section 138 of the Negotiable Instruments Act. Cognizance has been taken in CC.No.882 of 2014. Summons has been issued to the revision petitioner under section 204 Cr.P.C.

3. On the hearing date, on his behalf, a learned counsel filed a petition in CMP.No.64/2015 under section 205 Cr.P.C. On 18.01.2016, the learned Judicial Magistrate No.I, Tirupur passed the following order:

"Heard both sides. Due to his ill-health, this petition is allowed with some conditions that the Advocate shall appear for receiving copies, questioning and 313 Cr.P.C proceedings.

Finally, this petition is allowed with the above conditions and the counsel for Advocate shall be appeared every hearings without fail. Further, the Advocate shall appear for furnishing

copies on 8.2.2016."

4. Learned counsel for the revision petitioner would contend that the petitioner is ailing and is hailing from Nagpur and his present condition is such that he cannot make a long trip to the trial court. Under such circumstances, his counsel has filed the petition under Section 205 Cr.P.C.

5. Learned counsel for the revision petitioner also submits that on behalf of the revision petitioner/accused, his counsel is ready to receive the copies of documents under section 208 Cr.P.C. Further, he will participate in the first questioning under Section 251 Cr.P.C. Therefore, the conditions imposed in the impugned order are not in accordance with law.

6. I have anxiously considered the submissions of the learned counsel for the revision petitioner and perused the impugned order and the materials on record.

7. It is relevant to note Section 205 Cr.P.C, which runs as follows:

"205. Magistrate may dispense with personal attendance of accused:

(1) Whenever a Magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused and permit him to appear by his pleader.

(2) But the Magistrate inquiring into or trying the case may, in his discretion, at any stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in the manner herein before provided."

8. Section 205 Cr.P.C deals with the power of the Magistrate to grant leave of absence to the accused and to give leave to represent him by a learned counsel. This is dealt with under section 205(1) Cr.P.C. But, at the same time, once such a permission is granted, the accused cannot take it as a leave and licence to paralyze the court proceedings. Discretion has been conferred upon the learned Magistrate under section 205(2) Cr.P.C to compel the presence of the accused.

9. Criminal courts are infested with crowd. In the Magistrate Courts dealing with cases under Section 138 of the Negotiable Instruments Act, more particularly, in commercial towns, like Tirupur, the gathering of crowd will be more. It is a quite sickening sight. The teeming crowd in the Magistrate Courts affects the work/concentration of the Magistrates. Much

of the time of the Magistrates has been eaten away by giving them dates. Actually, no specific work is turned out. In other words, it is not an 'effective hearing date'. The accused should not be put to unnecessary hardship, but at the same time, long rope should not be given to the accused to spoil any progress to be made in the case.

10. Now reverting to the facts and circumstances of the present case, I am of the opinion that the conditions imposed in the impugned order seems to be extra conditions and they are unnecessary at the infancy of the case.

11. In view of the foregoing, the impugned order dated 18.01.2016 made in CMP.No.64 of 2015 in CC.No.882 of 2015 by the learned Judicial Magistrate No.1, Tirupur is modified as under:

(i) The counsel, who filed the petition and vakalath under section 205 Cr.P.C, will receive the copies of documents under section 208 Cr.P.C from the trial court and he will participate in Section 251 Cr.P.C questioning; and

(ii) thereafter, for any effective hearing, if the attendance of the revision petitioner/accused is absolutely necessary, the learned Magistrate can enforce his attendance.

12. This Criminal Revision is disposed of accordingly. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1. Judicial Magistrate No.1,
Tirupur.

2.-Do- Thro' The Chief Judicial Magistrate,
Tiruppur.

+1cc to Mr.P.Raja, Advocate sr.16869

Cr1.R.C. No.451 of 2016

tej (CO)
srg (21/03/2016)